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Deliberations

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA

4 v.

11 Cr. 62 (PAC)

5 DONNA LEVY,
6 DAVID LEVY,

Jury Trial

Defendants.

7 -----x

8 New York, N.Y.
9 March 21, 2013
10 11:19 a.m.

11 Before:

12 HON. PAUL A. CROTTY

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

CARRIE H. COHEN

HOWARD S. MASTER

18 Assistant United States Attorneys

19 HOWARD M. SREBNICK

20 NOAH FOX

ALEX ARTEAGA-GOMEZ

21 Attorneys for Defendant Donna Levy

22 GERALD L. SHARGEL

23 ROSS M. KRAMER

JENNIFER HAYS

24 Attorneys for Defendant David Levy

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1 (Trial resumed)

2 (Jury not present; time noted: 11:19 a.m.)

3 THE COURT: We have a note from the jury.

4 "Can we please have the Government Exhibit number for
5 the email in the prosecution summation by Mr. Master
6 referencing 'the program' concerning Donna Levy."

7 Here's the note. The note has already been shown to
8 the defendants. It will be marked as Court Exhibit 3.

9 I'm not going to call the jury in for this.

10 Is Mr. Levy here?

11 DEPUTY MARSHAL: I'll have him come out without his
12 tie on.

13 THE COURT: He doesn't need his tie on.

14 What's the answer?

15 MS. COHEN: Your Honor, it's Government
16 Exhibit 901-11.

17 (Defendant David Levy present)

18 THE COURT: Mr. Shargel, would you let Mr. Levy know,
19 bring him up to date.

20 What I propose to do, if it's all right with the
21 parties, Mr. Master was referring to Exhibit 901-11, write it
22 on the envelope.

23 MR. SHARGEL: That's fine.

24 THE COURT: I'll show you the envelope and we'll give
25 it to the marshal, the CSO, to bring in.

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1 MS. COHEN: That's fine with the government, your
2 Honor.

3 MR. SHARGEL: Fine with us.

4 THE COURT: All right. We'll give it to the marshal.

5 (Pause)

6 THE COURT: Anything else to take up? Mr. Master,
7 Ms. Cohen, anything else?

8 MS. COHEN: No, your Honor.

9 THE COURT: Mr. Shargel, anything else, Mr. Srebnick?

10 MR. SHARGEL: No, sir.

11 MR. SREBNICK: No, Judge. Thank you.

12 (Recess pending verdict)

13 (Jury not present; time noted: 12:30 p.m.)

14 THE COURT: OK. We have another note.

15 It says: When did Cardiac Network receive their
16 Medicare number? The document number, please.

17 It's from juror No. 8, Ms. Kimberly Kenney.

18 It comes out at 12:20.

19 Show the parties.

20 MS. COHEN: I believe there's a press release that
21 might answer that.

22 Do you have a copy of our exhibits up here? They're
23 coming up with our computer that has them.

24 THE COURT: Come on up.

25 (Pause)

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1 MS. COHEN: 201-49B and 201-49E.

2 MR. KRAMER: August 9, '07, and August 20, '07.

3 MR. SREBNICK: B20.

4 (Pause)

5 THE COURT: There was a government number on this, as
6 I recall, as well.

7 MR. SREBNICK: I don't think the government introduced
8 the letter from Medicare. We have B20, Judge.

9 THE COURT: I got B20. It's right here. I thought
10 there was a press release on it as well.

11 MR. SREBNICK: There was. The question was when did
12 Cardiac.

13 THE COURT: The question is when did Cardiac Network
14 receive their Medicare number. Document number, please.

15 MR. SREBNICK: So the one that answers that in my view
16 is B20 because it's a letter --

17 THE COURT: OK.

18 MR. SREBNICK: -- to Cardiac.

19 THE COURT: Government object?

20 MS. COHEN: Your Honor, I think if they could be
21 referred to all three documents because there was two press
22 releases referred to getting a Medicare number.

23 MR. KRAMER: I think these are when they started
24 billing.

25 MS. COHEN: The title is announced today it's been

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1 issued a Medicare provider number.

2 THE COURT: What's date of that press release?

3 MS. COHEN: August 9, 2007. It's Government
4 Exhibit 201-49B, and then there's another one, 201-49E. I
5 think if we refer them to all three documents.

6 MR. MASTER: We just don't know, your Honor, we just
7 don't know whether B20 has any -- whether there was additional
8 approval needed before they could actually bill.

9 MS. COHEN: And I don't know if there was any
10 testimony about B20.

11 THE COURT: They're not asking for testimony. They're
12 asking for document numbers.

13 MS. COHEN: 201-49B and E.

14 THE COURT: What do you have, Government Exhibit?

15 MS. COHEN: 201-49B, B as in boy, and Government
16 Exhibit 201-49E, E as in elephant.

17 Here, you want to look at it.

18 MR. SREBNICK: Thank you. If I could just have a
19 moment, I think Mr. Gomez was in the washroom. I want to make
20 sure there's no other document or date that corresponds to
21 this.

22 THE COURT: OK.

23 MR. SREBNICK: May we see the note one more time? We
24 apologize. Mr. Gomez just returned.

25 THE COURT: Did you refer to B20 at all during the

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1 course of the trial, Mr. Srebnick?

2 MS. COHEN: I don't recall any reference to it.

3 MR. SREBNICK: We're checking right now. It's
4 definitely in evidence.

5 THE COURT: Listen, it's clear there was press
6 releases on this, and it was the subject of testimony of
7 Mr. Helfer and both direct and cross-examination.

8 MR. SREBNICK: Yes, Judge. Jen Hays has just located
9 where it came up during the trial. It would be on page --

10 THE COURT: Is it Mr. Helfer?

11 MR. SREBNICK: -- 446, the cross-examination of
12 Mr. Helfer, B20 was referenced.

13 THE COURT: OK. So B20.

14 I'm going to send in B20 and 201-49B and -49E as
15 responsive to the question on Cardiac Network's receipt of the
16 Medicare number.

17 I've written it on the envelope in which we received
18 the note. I'm going to show you the envelope, and I'm going to
19 give the envelope to the court security officer.

20 I also want to announce that the lunch has just
21 arrived so they're having lunch.

22 MR. SHARGEL: So we go to the eighth floor and we'll
23 be available on the cell.

24 THE COURT: Want to show it to Mr. Shargel?

25 MR. SREBNICK: Can we make sure the exhibit number is

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1 correct, because we have a different exhibit number.

2 THE COURT: OK, Mr. Gomez?

3 MR. SREBNICK: Yes, your Honor. Thank you.

4 MS. COHEN: Yes, your Honor.

5 THE COURT: All right. I'll see you after lunch.

6 MR. MASTER: Thank you, your Honor.

7 THE COURT: Marked it as four.

8 (Recess pending verdict)

9 (Jury not present; time noted: 4:21 p.m.)

10 THE COURT: Have you figured out the answer to the
11 note?

12 MS. COHEN: We are working on it, your Honor. We want
13 to make sure we get the right bank records exhibit.

14 THE COURT: Has everybody seen the note?

15 MS. COHEN: Yes.

16 MR. MASTER: Yes.

17 THE COURT: You notice, Mr. Srebnick, this is the
18 third note we've gotten, each one from a separate juror.

19 MR. KRAMER: We noticed.

20 THE COURT: Not from the foreperson.

21 MR. SREBNICK: Amazing.

22 THE COURT: This is New York. Everybody does what
23 they want.

24 MS. COHEN: Remember, you were worried.

25 MR. SREBNICK: Contrary to your instruction, no less.

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1 THE COURT: I know my jurors.

2 "For Government Exhibit 1621, which of the listed
3 source exhibits specifically related to EWPI in 2010?"

4 Signed by Ms. Genevieve Shuler, juror No. 2, and it's
5 Court Exhibit No. 5.

6 MS. COHEN: We think we know what it is, but we want
7 to double check.

8 MR. SREBNICK: While they're doing that, your Honor, I
9 decided to object to any further guidance for the jury. It's
10 becoming as if they're asking questions about closing argument
11 again. So I think they should have to rely on their own
12 recollection and whatever the chart shows rather than we're now
13 giving them more argument, so to speak.

14 So I object to any further discussion on this subject.
15 I would propose they simply rely on their recollection.

16 THE COURT: OK. The objection is noted.

17 (Pause)

18 THE COURT: Isn't the answer to the question -- what
19 is the note? Who's got the note?

20 For Government Exhibit 1601, which of the listed
21 source exhibits specifically relate to EWPI in 2010?

22 Isn't the answer in the source right at the bottom?

23 MS. COHEN: Yes, your Honor, but because there are
24 different stocks listed there, the source is for all in
25 totality. It's not broken up by which source document goes to

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1 which stock. So I think what the jury is asking, which of the
2 source documents named below go to the EWPI line.

3 (Pause)

4 MS. COHEN: Your Honor, we have identified the four
5 exhibits that are included within this list of source exhibits
6 that go to EWPI. When Agent Reinhardt testified about it,
7 there are about four pages in the transcript starting at 1543
8 going through 1547 or 48 that talk about which source documents
9 were used for that line that refer to these same four exhibits
10 that I just identified. So perhaps we could read to the jury.

11 THE COURT: We're not going to read to the jury.
12 We're going to answer the question.

13 MS. COHEN: OK. We're just double checking the last
14 one.

15 THE COURT: What are the four?

16 MS. COHEN: I have Government Exhibit 1216.

17 THE COURT: Sixteen.

18 MS. COHEN: Government Exhibit 1253, Government
19 Exhibit 1201, and Government Exhibit 1220. In the transcript,
20 1220 is referred to as 1218, so that's the one we're going to
21 check what the hard copy says. But those four exhibits are
22 talked about in the transcript regarding the source.

23 THE COURT: You answer the question, right. The
24 question is which of the listed source exhibits are the
25 exhibits that relate to EWPI in 2010.

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1 MS. COHEN: I just want to be clear, there was
2 testimony in the record about it as well.

3 THE COURT: OK. But they don't ask for that.

4 MS. COHEN: We're just double checking the last one,
5 whether it's 1218 or 1220.

6 (Pause)

7 THE COURT: Do we have the answer?

8 MS. COHEN: I was just waiting to double check on the
9 1218, the 1220. The document is not here yet. I was trying to
10 look at it with Alex's computer.

11 THE COURT: Is that up here?

12 MS. COHEN: No, it's not, your Honor. They're
13 voluminous bank records so they're not in your binders.

14 THE COURT: Note No. 4 -- No. 5 has been rendered moot
15 by the note I just received.

16 "We found the information we were looking for from our
17 last request so we are all set."

18 MR. SREBNICK: What I did tell you, Judge.

19 THE COURT: Right again, Mr. Srebnick.

20 You got to be able to get this information more
21 quickly than this.

22 MS. COHEN: Your Honor, we're going to bring up a
23 computer so we can access our exhibits if that's OK.

24 THE COURT: Take a look at the note.

25 MR. KRAMER: Who wrote this one?

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1 THE COURT: Same person. I'll show you the prior one.
2 It's the same handwriting.

3 MS. COHEN: Juror No. 2.

4 THE COURT: Do you want to see it, Mr. Srebnick?

5 MR. SREBNICK: I saw it already. Thank you, Judge.

6 THE DEPUTY CLERK: Court Exhibit No. 6.

7 (Pause)

8 THE COURT: What do you want me to do on timing?

9 MR. SHARGEL: I think that the government and I agree,
10 Mr. Srebnick may want to be heard, but my strongly held view
11 and I think I'm saying the same for the government is that we
12 not ask them any question about this. You made clear at the
13 end of your charge that they have certain options. You
14 described the options, it was up to them. And I'm concerned --

15 THE COURT: If you don't want me to ask, I won't ask.

16 MR. SHARGEL: I don't want you to ask.

17 THE COURT: Then I won't ask.

18 MR. SHARGEL: With all respect.

19 THE COURT: Just wait until midnight hour, I guess.

20 (Recess pending verdict)

21 (Jury not present; time noted: 4:55 p.m.)

22 THE COURT: The jury wants to come in.

23 Mr. Levy, do you want to put on your tie? It's up to
24 you.

25 MR. SHARGEL: Your Honor, do we have a note or a

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Verdict

1 verdict?

2 THE COURT: We have a note here that says we have come
3 to a verdict. I don't know what the verdict is. It will be
4 marked as Court Exhibit 7. It reads, "We have come to a
5 verdict." Signed by the foreman, Mr. Dong.

6 (Jury present; time noted: 4:59 p.m.)

7 THE DEPUTY CLERK: Your Honor, ladies and gentlemen of
8 the jury, in the matter United States of America v. Donna Levy
9 and David Levy, docket No. S5 11 CR 62, verdict form.

10 No. 1. How do you find each defendant as to Count
11 One, with respect to:

12 A. The conspiracy to commit securities fraud.

13 David Levy?

14 THE FOREPERSON: Guilty.

15 THE DEPUTY CLERK: Donna Levy?

16 THE FOREPERSON: Guilty.

17 THE DEPUTY CLERK: B. The conspiracy to commit wire
18 fraud.

19 David Levy?

20 THE FOREPERSON: Guilty.

21 THE DEPUTY CLERK: Donna Levy?

22 THE FOREPERSON: Guilty.

23 THE DEPUTY CLERK: No. 2. How you to find each
24 defendant with respect to Count Two, securities fraud
25 concerning Cardiac Networks, Inc.

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Verdict

1 David Levy?

2 THE FOREPERSON: Guilty.

3 THE DEPUTY CLERK: Donna Levy?

4 THE FOREPERSON: Guilty.

5 THE DEPUTY CLERK: No. 3. How do you find each
6 defendant with respect to Count Three, securities fraud
7 concerning Banneker Inc.

8 David Levy?

9 THE FOREPERSON: Guilty.

10 THE DEPUTY CLERK: Donna Levy?

11 THE FOREPERSON: Guilty.

12 THE DEPUTY CLERK: No. 4. How do you find David Levy
13 with respect to Count Four, securities fraud concerning
14 Greenway Design Group Inc.?

15 THE FOREPERSON: Guilty.

16 THE DEPUTY CLERK: No. 5. How do you find David Levy
17 as to Count Five with respect to:

18 A. The conspiracy to violate Title 18, United States
19 Code, Section 1956(a)(1)(B)(i), concealment money laundering?

20 THE FOREPERSON: Guilty.

21 THE DEPUTY CLERK: B. The conspiracy to violate Title
22 18, United States Code, Section 1956(a)(2)(B)(i),
23 transportation money laundering?

24 THE FOREPERSON: Guilty.

25 THE DEPUTY CLERK: No. 6. How do you find Donna Levy

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Verdict

as to Count Six, manipulation for hire, with respect to:

A. The conspiracy to commit securities fraud?

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: B. The conspiracy to commit wire fraud?

THE FOREPERSON: Guilty.

THE DEPUTY CLERK: No. 7. How do you find Donna Levy with respect to Count Seven, securities fraud concerning Emerging World Pharma Inc.?

THE FOREPERSON: Guilty.

THE COURT: Want the jury polled?

MR. SHARGEL: Yes, sir.

(Jury polled; each juror answered in the affirmative)

THE DEPUTY CLERK: Your Honor, the verdict is unanimous.

THE COURT: Anything else?

MR. SHARGEL: No, sir.

THE COURT: I want to thank you for your conscientious service. It's very much appreciated.

If you'd like, if you don't mind, I'd like to say personally thank you to you in the jury room. This will take a couple minutes. So if you don't mind waiting for two or three minutes, I'll be right back in the jury room. Thank you very much.

(Jury discharged)

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1 THE COURT: Please be seated.

2 Mr. Shargel.

3 MR. SHARGEL: Your Honor, with regard to timing for
4 Rule 29 motion and with respect to Rule 33 motion, can we deem
5 those motions -- this is a practice I've seen occur recently --
6 can we deem those motions having been made? Your Honor heard
7 the arguments. And then we'll have time to supplement the post
8 verdict application?

9 THE COURT: I will deem them made, and you can work
10 with Mr. Master on a schedule for further supplementation.

11 MR. SHARGEL: Very well.

12 THE COURT: Same for you, Mr. Srebnick?

13 MR. SREBNICK: Thank you, Judge, yes.

14 MR. MASTER: Your Honor, at this time the government
15 would seek a formal order of remand concerning David Levy.

16 And modification of bail, I believe that there is an
17 understanding between the parties that in the event of a guilty
18 verdict that Donna Levy, government would consent to not
19 revoking her bail, but would seek modification to include home
20 detention with electronic monitoring pending sentencing.

21 THE COURT: Mr. Srebnick.

22 MR. SREBNICK: Yes, your Honor.

23 THE COURT: Bail is so modified.

24 This is for appeal, right?

25 MR. MASTER: This would be, with respect to Donna

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1 Levy, there's consent that her bail not be revoked.

2 THE COURT: Her bail not be revoked, be modified to
3 provide for home confinement.

4 MR. MASTER: Right.

5 With respect to David Levy, there was, as your Honor
6 knows, there is a bail order outstanding which has not been
7 satisfied. We would seek that that be formally revoked now,
8 especially now that the presumption has been reversed and in
9 view of the evidence at trial and the fact that Mr. Levy is
10 facing a very long sentence at this point.

11 THE COURT: Mr. Shargel.

12 MR. SHARGEL: Judge, I intend to make a bail
13 application for Mr. Levy and to reinstate his bail next week.
14 I will do it formally by writing.

15 THE COURT: All right.

16 MR. SHARGEL: Because I think --

17 THE COURT: In the meantime you want bail continued,
18 bail conditions continued.

19 MR. SHARGEL: Yes. In the meantime I would like bail
20 conditions continued.

21 THE COURT: OK. He'll remain remanded then.

22 MR. SHARGEL: Yes.

23 THE COURT: OK. You'll make your motion when?

24 MR. SHARGEL: Next week is the holiday, so we'll make
25 it the week after.

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1 THE COURT: All right. Fine.

2 MR. SHARGEL: Thank you, Judge.

3 THE COURT: Anything else?

4 MR. MASTER: Not at this time, your Honor.

5 THE COURT: Does anybody want to see the jury?

6 MS. COHEN: We do not, your Honor.

7 MR. SHARGEL: I do not.

8 THE COURT: Mr. Srebnick?

9 MR. SREBNICK: No, thank you.

10 THE COURT: It's my custom to see the jury just to say
11 thank you. I don't discuss the case. So I'll tell them that
12 nobody wants to talk to them later. They're free to go.

13 MR. SHARGEL: You know, if they want to, sometimes it
14 is the case that they want to talk to the lawyers. If you put
15 that question to them, we'll wait a moment.

16 THE COURT: All right, fine. This will take me about
17 three minutes.

18 MS. COHEN: It's the government's practice not to the
19 talk to the juries on a guilty verdict.

20 MR. SREBNICK: Your Honor, Ms. Levy drove all the way
21 from Florida here and I want to make sure it's OK with the
22 government, she's going to drive straight back and if she could
23 start the electronic monitoring Monday morning with the
24 probation office in Florida, is that acceptable to everybody?
25 It's going to take two days. It's up to you all.

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1 MR. MASTER: Since she's not here and she's not home,
2 it would have to include some period of time for her to get
3 home, so.

4 THE COURT: The answer to your question is yes,
5 Mr. Srebnick.

6 MR. SREBNICK: So she'll be at the probation office on
7 Monday in Florida.

8 MR. MASTER: Thank you.

9 (Trial concluded)

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